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No. 91-875

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

FLORENCE TALLUTO, et al.,

Petitioners,

—vs.—

PLANNED PARENTHOOD MARGARET SANGER CLINIC (MANHATTAN), et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

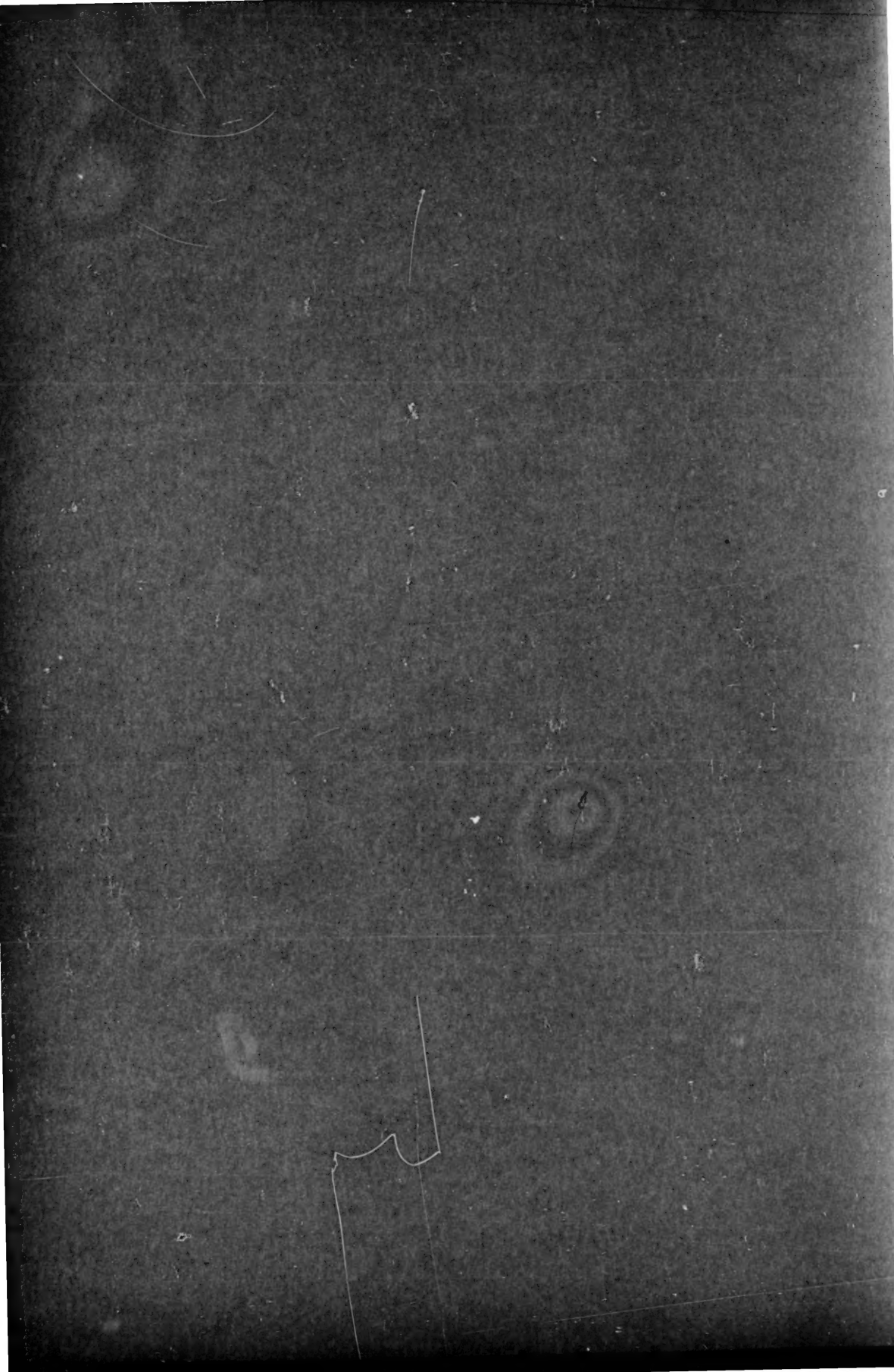
RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether petitioners have shown that this case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate settlement in this Court before judgment by the United States Court of Appeals to which the case has been fully argued and submitted.

II. Whether respondents' federal claim under 42 U.S.C. § 1985(3) was so obviously frivolous as to deprive the district court of jurisdiction to enter judgment and to issue the injunctions of which petitioners have been found to be in contempt on pendent state law grounds.

LIST OF PARTIES

Respondents accept petitioners' list of the parties. In accordance with Rule 28.1 of the Rules of this Court, respondents report that Eastern Women's Center, Inc., Planned Parenthood of New York City, Inc., New York State National Abortion Rights Action League ("NARAL"), Inc., Religious Coalition for Abortion Rights - New York Metropolitan Area, and the National Organization for Women are corporations. None of them have parent or subsidiary companies, but New York State NARAL, Inc. is affiliated with the National Abortion Rights Action League, Inc. and Planned Parenthood of New York City, Inc. is affiliated with Planned Parenthood Federation of America, Inc.

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No. 91-875

IN THE
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FLORENCE TALLUTO, et al.,
Petitioners,

v.

PLANNED PARENTHOOD MARGARET SANGER CLINIC (MANHATTAN), et al.,
Respondents.

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Respondents do not adopt the petitioners' statement of the case, which contains several misstatements of fact and law, as well as material which forms no part of the record.

Petitioners are eight individuals who have knowingly violated one or more different injunctive orders, issued by the United States District Court for the Southern District of New York. These injunctive orders were issued by the district court to prohibit blocking access to women's health clinics where abortions are performed in New York City, and in Westchester, Suffolk and Nassau counties in New York State, because such blockades pose the threat of irreparable harm to women's health. The injunctions, which rest on federal and independent state grounds were unanimously affirmed in 1989 by the U.S. Court of Appeals for the Second Circuit, and this Court denied certiorari in 1990. N.Y. State Nat'l Org. for Women v. Terry, 704 F.Supp. 1247 (S.D.N.Y.), aff'd, 886 F.2d 1339 (2d Cir. 1989), cert. denied, 110 S. Ct. 2206 (1990).

Petitioners and four other contemnors who have not petitioned this Court have

appealed the contempt findings against them to the U.S. Court of Appeals for the Second Circuit, which has yet to rule on the consolidated appeals. As detailed below, petitioners now attempt, before judgment by the court of appeals, to extricate themselves and selected issues from the consolidated appeals, while presumably leaving the court of appeals to rule on the other four contemnors, and on a multiplicity of procedural and substantive issues raised there by petitioners which are not mentioned in the petition. Petitioners have demonstrated no reason for disrupting the appellate process in the court of appeals, where their arguments have been heard and can and will be addressed.

1. **Proceedings Below**

The orders violated by petitioners were issued as a result of a 1988 suit brought by respondents against Operation Rescue, an unincorporated association whose members

(including petitioners) organize and carry out mob blockades of women's health clinics which provide abortion services, and against prominent Operation Rescue leaders Randall Terry, Thomas Herlihy and James Lisante.[1] Originally filed in New York State Supreme Court, the suit was removed by the defendants to the U.S. District Court for the Southern District of New York.

Southern District Judge Ward issued a Temporary Restraining Order on May 4, 1988, a Preliminary Injunction on October 27, 1988, and, upon granting summary judgment to respondents and to plaintiff-intervenor, the City of New York, on two state law claims and a 42 U.S.C. § 1985(3) claim,[2] a permanent

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[1] Operation Rescue, Terry, Herlihy and Lisante will be referred to in this brief as the "defendants." Although appeals by Operation Rescue, Terry and Herlihy are consolidated and pending with petitioners' appeals before the court of appeals, none of the defendants joined in the instant petition for a writ of certiorari.

[2] Petitioners misleadingly describe the proceedings below by referring to respondents' "assertions" of two federal causes of action and

injunction on January 10, 1989. See generally, N.Y. State Nat'l Org. for Women, 704 F.Supp. 1247 (S.D.N.Y.), aff'd, 886 F.2d 1339 (2d Cir. 1989), cert. denied, 110 S. Ct. 2206 (1990). All three injunctive orders make clear that those who oppose women's rights to choose abortion are free to picket and protest. The orders, however, also contain express warnings that knowing violators of the orders who, acting in concert with defendants, physically blockade health care facilities, are subject to civil coercive contempt fines. Petition App. at A-1, A-5, A-9.

"various pendant state causes of action including trespass." Petition at 4. Petitioners fail to clarify that the injunctions are based on three claims which respondents and plaintiff-intervenor the City of New York not only asserted but on which they won summary judgment, which was upheld by the court of appeals: trespass and public nuisance under New York State law and 42 U.S.C. § 1985(3) (1982) (right to travel violation). N.Y. State Nat'l Org. for Women, 704 F. Supp. 1247 (S.D.N.Y.), aff'd., 886 F.2d 1339 (2d Cir. 1989), cert. denied, 110 S.Ct. 2206 (1990). The other "asserted" causes of action in respondents' original complaint are irrelevant at this stage.

The United States Court of Appeals for the Second Circuit reviewed and unanimously affirmed the orders in 1989, with the one modification -- that the contempt fines be payable to the U.S. Treasury instead of to plaintiffs. N.Y. State Nat'l Org. for Women v. Terry, 886 F.2d 1339 (2d Cir. 1989) (No. 89-1408), cert. denied, 110 S.Ct. 2206 (1990). The court of appeals held that the district court had subject matter jurisdiction under 42 U.S.C. § 1985(3) and had correctly exercised pendent jurisdiction over respondents' trespass and the plaintiff-intervenor City of New York's public nuisance claims, and that summary judgment was correctly granted on all three claims by the district court. Id.

The court of appeals also considered the contempt fines, pronouncing them to be a form of civil coercive contempt remedy, and stating that "[t]he ultimate consideration is whether the coercive sanction - here, a

fine - is reasonable in relation to the facts. That determination is left to the informed discretion of the district court." Id. at 1353 (citation omitted). The court of appeals also considered and rejected defendants' arguments that the injunctions unreasonably restricted their First Amendment rights.[3] Id. at 1364.

Defendants petitioned this Court for a writ of certiorari to the U.S. Court of Appeals for the Second Circuit, which this Court declined to grant. Terry v. N.Y. State Nat'l Org. for Women, 110 S. Ct. 2206 (1990). Among the questions presented which this Court declined to reach was the following: "Whether respondents' federal claim under 42 U.S.C. § 1985(3) claim was so "obviously frivolous" as to deprive the district court of jurisdiction to enter judgment on the

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[3] Respondents' repeated quotation of the court of appeals' recognition that clinic blockading is a "form of political speech," Petition at 4, 7, misleadingly suggests that the court of appeals did not consider such a claim.

pendent state claims." Respondents' Brief in Opposition at i, N.Y. State Nat'l Org. for Women, 886 F.2d 1339 (2d Cir. 1989) (No. 89-1408), cert. denied, 110 S.Ct. 2206 (1990).

The eight petitioners are among thirteen individuals and groups to have been found in contempt by the district court for knowing violations of one or more of the injunctive orders. Twelve contemnors, including the petitioners, have consolidated their appeals from two different contempt orders of the district court before the court of appeals. N.Y. State Nat'l Org. for Women v. Terry, No. 90-6187 (2d Cir. argued May 20, 1991).

The first of the challenged district court judgments held in contempt seven of the petitioners -- Talluto, LaPenna, Lee, Foreman, McMonagle, White and Pearson -- and Operation Rescue, B.O.R.N. (a local affiliate), Terry and Herlihy (who appealed to the Second Circuit but for reasons not explained to this Court have decided not to

petition). Petition App. at A-13 - A-67. Of these contemnors, only Pearson disputed acting with notice of the injunctions. None of the others chose to dispute knowledge of the injunctions' existence and terms, acting in concert with defendants or any of respondents' other factual allegations of their contumacious conduct; consequently the district court granted summary judgment on contempt to respondents against them. Id. The district court held a proceeding to determine the facts as to Pearson's contempt before finding him in contempt. Id.

The second judgment of the district court now challenged in the consolidated appeals held the eighth petitioner, Christopher Slattery, in contempt of two of the injunctive orders after a separate hearing on disputed facts. Petition App. at A-68 - A-81. The district court found all the petitioners to be "persons in active concert or participation with [defendants]

who receive[d] actual notice of the order by personal service or otherwise," under Rule 65(d), Fed. R. Civ. P., and who knowingly violated the injunctions' terms.

Of all the petitioners, only Slattery chose to present any financial information upon which the district court could evaluate the burden of the sanctions imposed.[4] The district court considered his financial condition and suspended execution of half of the civil coercive contempt fine as a result. Petition App. at A-76 - A-77.

In the consolidated appeals currently pending before the court of appeals brought by all twelve contemnors, the eight petitioners have argued not only the

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[4] Petitioner Talluto's cynical attempt to curry sympathy for her financial plight, which results from her knowing choice to violate the district court's orders, comes too late. Petition at 6. The time to present such information was in 1989 before the district court. The information now presented in the petition does not form part of the record, was never made available to the district court and is inappropriately set before this Court.

questions now presented to this Court, but also the following points, as set forth in abbreviated form in the table of contents of their briefs filed with the court of appeals:

> Service of process upon [petitioners Talluto and LaPenna] by Federal Express did not comport with due process or Rule 4 of the Federal Rules of Civil Procedure;
>
> [Respondents] may not circumvent Rule 4(j) FRCP [sic], by bringing a contempt proceeding under Rule 65(d) against unserved parties defendant named in the original action under fictitious names under Rule 10(a);
>
> [Respondents] failed to comply with Rule 65(d), FRCP [sic];
>
> > A. [Respondents] have failed to show that the [petitioners] acted as agents, servants or employees of any of the original defendants under Rule 65(d), FRCP [sic];
> >
> > B. Each of the injunctive orders is void and unenforcible [sic] against non-parties by reason of their failure to comply with Rule 65(d)'s requirements as to form and content;
>
> With respect to [petitioners] Slattery, White, Pearson, Talluto

> and LaPenna the contempt proceedings were of the nature of a criminal proceeding in which [petitioners] should have had the right to remain silent, the right to a jury trial, and the right to be prosecuted by the government instead of [respondents];
>
> [Respondents'] attempted service on [petitioners] LaPenna and Talluto under CPLR 308(5) was invalid and void requiring reversal as to those [petitioners];
>
> [Respondents] have not yet recognized (since May, 1988) that this is a case of first impression, involving the interplay of Rules 4(j), 10(a) and 65(d), Fed.R.Civ.Proc. [sic]

Consolidated Briefs for the Appellants at i-ii; Reply Briefs for Defendants and Respondents-Appellants at i, N.Y. State Nat'l Org. for Women, No. 90-6187 (2d Cir. argued May 20, 1991).

On May 20, 1991, the court of appeals heard argument on these substantive and procedural questions, all of which respondents vigorously dispute. The court is currently working on its opinion; judgment has not yet been entered.

REASONS FOR DENYING THE WRIT

I. PETITIONERS HAVE FAILED TO MAKE THE REQUISITE SHOWING TO OBTAIN A WRIT OF CERTIORARI PRIOR TO JUDGMENT IN THE COURT OF APPEALS

Petitioners seek an extraordinary result, in wholly ordinary circumstances. They ask this Court to grant a Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Second Circuit prior to judgment on a run-of-the-mill contempt appeal. This case has been fully argued and submitted to the court of appeals for more than seven months and petitioners have failed to demonstrate why that process must be disrupted at this late date.

Petitioners' attempt to leap-frog the instant case to this Court's docket -- circumventing consideration by the court of appeals -- is not the only disruption of this Court's procedures that petitioners seek. They also ask to consolidate this case before this Court with Bray v. Alexandria Women's

Health Clinic, cert. granted, 111 S.Ct. 1070 (Feb. 25, 1991) (No. 90-985) (argued Oct. 16, 1991). That case has been fully briefed and argued to this Court, and is now awaiting decision. Thus, petitioners seek to disrupt the proceedings in two cases, before two different courts.

The only justification petitioners offer for such wholesale departures from normal appellate procedure is the alleged "seriousness of the judgments at bar" and the supposed identity of "subject matter questions" between this case and Bray. Petition at 5. These claims are simply insufficient under this Court's rules to warrant the relief sought here.

Petitioners style their motion as arising under 28 U.S.C. § 1254(1).[5]

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[5] § 1254(1) reads as follows:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

Petitioners wholly ignore, however, Supreme Court Rule 11, which severely limits the seemingly broad language of this statute by imposing heavy burdens on those seeking pre-judgment certiorari. "Such extraordinary review [under 28 U.S.C. § 1254(1)] is available only upon a showing that satisfies Supreme Court Rule 11." 12 J. Moore, H. Bendix & B. Ringle, Moore's Federal Practice, ¶ 434.01, at 6-44 (1990). Supreme Court Rule 11 reads as follows:

> A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is given in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate settlement in this Court. 28 U.S.C. § 2101(e).

U.S. Sup. Ct. R. 11, 28 U.S.C. (1991).

> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; . . .

28 U.S.C. § 1254(1) (1991)

Pursuant to this Rule, certiorari before judgment is "an extremely rare occurrence." Coleman v. PACCAR, Inc., 424 U.S. 1301, 1304 n.* (1976). Pre-judgment certiorari is granted "in cases of great constitutional significance and of extraordinary national importance for other reasons." R. Stern, E. Gressman and S. Shapiro, Supreme Court Practice, 227-228 (6th ed. 1986). See, e.g., Dames & Moore v. Regan, 453 U.S. 654 (1981) (Court upheld the Iran hostages agreement, faced with the deadline set in that document); United States v. Nixon, 418 U.S. 683, 686-87 (1974) ("public importance of the [presidential confidentiality] issues presented and their need for prompt resolution" necessitated pre-judgment certiorari when President Nixon sought to quash subpoena duces tecum during Watergate investigation); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952) (constitutionality at issue of President's

seizure of steel mills during steel workers' strike; the strike threatened to shut down the nation's production).

In contrast to these cases, involving compelling issues of national importance in time-sensitive circumstances, there is no exigency here. Petitioners' conclusory claims of urgency, based on the supposed "seriousness of the judgments at bar . . . against eight individuals and the attendant chilling effect and mental anguish over potential collection actions," Petition at 5, rest primarily on alarmist factual assertions about one petitioner which do not form part of the record, and fall woefully short of the "imperative public importance" standard set by Rule 11.

Petitioners' second argument, that pre-judgment certiorari is warranted because of the asserted identity of "subject matter questions in the same context" pending before this Court in Bray, is belied by perusal of

the questions petitioners have presented to the court of appeals. This case, which petitioners vehemently assert below turns on the "interplay of Rules 4(j), 10(a) and 65(d), Fed.R.Civ.Proc." and other minutiae of service and contempt, is by no means identical to Bray.

Petitioners' appeal of contempt findings against them is not on all fours with the Bray petitioners' challenge of a 42 U.S.C. § 1985(3) claim. While the court of appeals' 1989 decision in this case did perhaps raise similar, although not identical, questions to those presented in Bray, as explained above at pages 7-8, this Court declined in 1990 to examine that 1989 decision and it is not presented by the instant Petition to this Court.

Furthermore, even if the instant case and Bray were similar, mere similarity is not sufficient grounds for granting a writ of certiorari prior to judgment by a Court of

Appeals. Lindgren and Marshall, 8 The Supreme Court's Extraordinary Power to Grant Certiorari Before Judgment In the Court of Appeals, Sup.Ct.Rev. 259, 301 (1986). Petitioners have not shown that a grant of a writ of certiorari prior to judgment will result in any of the benefits to the Court or the litigants necessary to justify the issuance of this extraordinary writ.

The Supreme Court gains no benefit in perspective if the cases consolidated are really the same. "So a petitioner must also argue that his case adds something to the pending case." Lindgren and Marshall, supra, at 303. Petitioners have argued the opposite; their petition argues (erroneously) that the cases are identical, quotes extensively from briefs already filed in Bray and makes no new legal arguments. Belatedly adding this case to the determination of Bray would therefore add nothing to that case. In fact, it would be disruptive in several ways.

Here a grant of certiorari would impede judicial efficiency. "Where judicial efficiency is concerned, the crucial question is not whether granting early certiorari will promote overall efficiency, but whether granting early certiorari will reduce the workload of the Supreme Court." Lindgren and Marshall, supra, at 301. Petitioners ask this Court to hold in abeyance its progress towards rendering a final decision in Bray, and to consider new parties serving new papers covering, as petitioners assert, "identical subject matter questions in the same context." Granting the writ will contribute nothing but delay and the duplication of efforts already completed, and will thwart, not promote judicial efficiency.

Petitioners request that they "be afforded the opportunity to present their views on the issues before they are finally decided by this Court in Bray," Petition at 6, but this is not the appropriate means or

time for doing so. Petitioners have sat on their hands for more than nine months since certiorari was granted in Bray on February 25, 1991. This case was docketed in the court of appeals long before a writ of certiorari was granted in Bray, and, thus, this petition could have been brought at any time since February 25, 1991.[6] Now, two months after this Court heard oral argument in Bray, petitioners, who never even filed an amicus brief in Bray, have discovered a sudden necessity to have their case actually consolidated with Bray. Such a claim is at best specious.

Furthermore, even if petitioners had presented some good faith explanation for their failure to petition earlier, the Court does not have an obligation to hear all parties who may be interested in a given

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[6] See 12 Moore's Federal Practice, supra, ¶ 433.01[2], at 6-38.

issue.[7] "Fairness does not require being a party to a Supreme Court case." Lindgren and Marshall, supra, at 302.

Such an argument was rejected, and the petition for certiorari rejected, in Keller v. Mixon, 419 U.S. 880 (1974), where the state of Florida unsuccessfully argued that it had "an obligation to its citizens to request a hearing by this Court so that its arguments and conclusions may be presented prior to this Court reaching a decision which will bind the State of Florida."[8] Likewise, this Court denied certiorari in spite of petitioners' argument in Hawaiian Telephone

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[7] For example, it would have been inconceivable for this Court to entertain the arguments of all lower-court litigants who were affected by the ruling in Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 111 S.Ct. 2773 (1991) (Court held the statute of limitations applicable to § 10(b) actions the one-and-three-year provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934), let alone consolidate all their cases with Lampf, prior to rendering that decision. The resulting influx of litigants would have paralyzed this Court.

[8] See Lindgren and Marshall, supra, at 301, quoting the Petition for Certiorari at 8.

Co. v. Department of Labor, 435 U.S. 943 (1978), that "organized labor, as well as the Chamber of Commerce of the United States, would be afforded an opportunity to participate as parties in the resolution of these important issues."[9]

In sum, the practice in this Court clearly establishes that mere similarity of issues, and the "seriousness" of judgments against interested individuals do not approach the showings necessary to invoke this extraordinary writ. Therefore, the petition for a writ of certiorari should be denied.

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[9] See Lindgren and Marshall, supra, at 301-02, quoting the Joint Petition for Certiorari at 12.

II. PETITIONERS' REQUEST THAT THIS COURT SIMPLY HOLD THIS PETITION WITHOUT DECIDING IT UNTIL RENDERING A DECISION IN BRAY SEEKS TO BYPASS APPELLATE COURT REVIEW ENTIRELY AND MUST BE DENIED

Petitioners alternatively request this Court to hold their Petition pending a decision in Bray, upon which event they urge this Court to bypass the court of appeals and vacate the district court's ruling. Petition at 9. It is a basic tenet of our appellate system that "[i]t is . . . the task of a Court of Appeals to decide all properly presented cases coming before it." Wisniewski v. United States, 353 U.S. 901, 902 (1957) (discussing 28 U.S.C. § 1254(2) certification by courts of appeal of questions to the Supreme Court). Petitioners' request amounts to a total rejection of this tenet.

What Petitioners effectively wish is to remove a properly presented case from the court of appeals entirely. The federal

appellate system does not need such micromanagement. If this Court rules in Bray prior to the court of appeals' decision in this case, the court of appeals can and must be trusted to apply the Bray ruling in any appropriate manner. If the court of appeals rules before the Bray decision, a petition for rehearing to the court of appeals or a petition for certiorari might be filed at that time by petitioners or respondents, depending on the decision. At this point, this Court should recognize petitioners' ploy for what it is -- a transparent attempt to avoid the consideration of their appeal by the court of appeals -- and reject it, by denying the petition promptly.

III. RESPONDENTS' CLAIM UNDER 42 U.S.C. § 1985(3) IS NOT FRIVOLOUS

Even if this Court is not deterred by the unusual and disruptive procedural step sought by petitioners, there is no point on the merits in granting a writ of certiorari.

Petitioners' challenge to the contempt findings and fines against them could only succeed if this Court were to decide that the district court had no jurisdiction to decide the state law claims which provide a basis for the injunctions independent of the § 1985(3) claim challenged by petitioners.

Petitioners' argument that respondents' § 1985(3) claims are wholly insubstantial, thereby depriving the federal court of pendent jurisdiction over the state law claims, patently has no merit in light of the many judicial decisions upholding claims under § 1985(3) in similar circumstances. Furthermore, this Court declined to grant certiorari to address this precise question in this case in May 1990 and, given that nothing has changed since that time except the makeup of the Supreme Court bench, it would be entirely inappropriate to revisit that question now.

Where a claim is based on reasonable interpretation of, and not foreclosed by, existing precedent, it meets the substantiality requirement necessary to confer jurisdiction on a federal court over pendent state claims.

> [c]laims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purposes of 28 U.S.C. § 2281. A claim is insubstantial only if its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy.

Hagans v. Lavine, 415 U.S. 528, 537-38 (1974) (quoting Goosby v. Osser, 409 U.S. 512, 518 (1973)) (internal quotations omitted).

Here, respondents' § 1985(3) claims are based squarely on arguable interpretations of Supreme Court and other federal precedent, leaving little doubt that they are, at a minimum, substantial under Hagans and Goosby.

Thus, the attack on jurisdiction at issue here -- the substantiality of the § 1985(3) claims under the Haqans and Goosby standard -- has no basis.[10]

Indeed, petitioners have failed to address this standard. Apart from reiterating substantive arguments on the merits of the § 1985(3) claims, petitioners advance no authority in support of their position. Petitioners' rehashed arguments on the "right to interstate travel," Petition at 12-14, and "class animus," Petition at 14-15, miss the only point relevant to this petition. Those claims, even if ultimately dismissed by the Supreme Court in Bray, are

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[10] Petitioners note that United States Catholic Conference v. Abortion Rights Mobilization, Inc., 487 U.S. 72 (1988), stands for the general proposition that a non-party may attack the subject matter jurisdiction of the lower court to issue the order. Subject matter jurisdiction, however, either exists or does not exist. The court of appeals' 1989 ruling in this case that the district court had subject matter jurisdiction to enter judgment and issue injunctions applies to non-parties as well as to parties.

based on reasoned and reasonable arguments about the interpretation of Supreme Court precedent and have been accepted as substantial by well-respected federal appellate court judges. See, e.g., Volunteer Medical Clinic v. Operation Rescue, 60 U.S.L.W. 2308 (6th Cir. October 29, 1990) (No. 90-5159) (accepting validity of § 1985(3) claim in similar fact situation but reversing lower court finding for plaintiffs due to deficient presentation of evidence); Roe v. Operation Rescue, 919 F.2d 857 (3d Cir. 1990) (finding federal claims sufficient to support pendent jurisdiction on facts identical to this case); N.Y. Nat'l Org. for Women, 886 F.2d 1339 (2d Cir. 1989), cert. denied, 110 S. Ct. 2206 (1990) (earlier rulings in this case).

Because pendent jurisdiction of the district court was correctly exercised, even if this Court deems the § 1985(3) claims made in Bray to be without merit and thus holds

that no future § 1985(3) claim could justify the exercise of pendent jurisdiction over state law claims, the injunctions in this case would be upheld on the pendent state law grounds. Therefore, there would be no reason to grant certiorari even if this petition were filed at the appropriate time. There is even less reason to grant the petition now, before the court of appeals has ruled on the myriad issues currently submitted to it.

CONCLUSION

For all the foregoing reasons, respondents respectfully urge this Court to deny the petition for a writ of certiorari.

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Respectfully submitted

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